

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

CONFERENCE COMMITTEE ON SB 20

Call to Order: By **SENATOR WALTER MCNUTT**, on March 9, 1999 at
5:07 P.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Walter McNutt
Sen. Tom Beck
Sen. Debbie Shea
Rep. Larry Grinde
Rep. Mark Noennig
Rep. Tom Facey

Members Excused: None.

Members Absent: None.

Staff Present: Phoebe Olson, Secretary
Gordon Higgins, Legislative Services Division

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Conference Committee on SB 20

SENATOR MCNUTT, called the meeting to order. He reminded the committee of the conversations they had yesterday. He presented the information the committee had requested.

EXHIBIT (ccs53sb0020a01)

Gordon Higgins, said **REPRESENTATIVE NOENNIG** had been correct, and there was a constitutional problem, although it didn't reside with the process rather the statute on Quasi Judicial boards. Refer to (Exhibit one). He suggested the committee consider amending the amendment to say the decision must be made by two or more board members.

SENATOR SHEA, asked where in the Montana Constitution the Board of Pardons was mentioned.

Gordon Higgins, replied it was not mentioned.

SENATOR SHEA, said that they were fighting about having two board members, because it spreads them so thin.

Gordon Higgins, said the investigation could still be done by a hearings officer, but the decision couldn't be made by the hearings officer and the board member. Two or more board members would have to decide the outcome from the hearings officers recommendation.

Craig Thomas, said he understood their problem. He maintained that two board members were required to make the decision at the present time and didn't see the sense in changing the bill at all.

SENATOR SHEA, asked if the term unconstitutional was even applicable here.

Gordon Higgins, said this could be found unconstitutional because it goes against state statute.

REPRESENTATIVE NOENNIG, said it didn't appear that it was necessary to have a personal meeting with the majority of the board that makes the decision. It was only necessary under due process that they have a face-to-face meeting with someone, and in this case, it could be the hearings officer. He said the only requirement was that more than one board member sign the decision. He thought the only other option would be to redesign how the board was constructed.

SENATOR SHEA, asked if they were doing it that way now.

Craig Thomas, replied yes, one board member or one staff member, whoever was available.

REPRESENTATIVE NOENNIG, asked what additional difficulty it would place on them to get an additional signature.

Craig Thomas, said there were a number of problems with that. He said that, number one, you were having a board member sign a disposition who didn't participate in the hearing. He maintained that put them in an uncomfortable position.

REPRESENTATIVE FACEY, said it seemed to him like they were caught between an all citizen board and a professional board. He said he didn't know they could accomplish what needed to be done in this session.

SENATOR BECK, asked if all inmates would have to appear before the board, or if they could appear before the hearings examiner and he could come back to the board with a recommendation.

Craig Thomas, said that was how it was done at the present time. The hearings officer made recommendations to the board. He said this would have allowed the decision to be made right away, and not put board members in the position of signing depositions they hadn't participated in. He couldn't understand why the legislature couldn't take the action they were requesting because they were the ones who established parole criteria.

SENATOR MCNUTT, wondered if it would be feasible to look at that.

Gordon Higgins, said it was simply a decision of the board members. He said he was uncertain if you could define the board and a staff member. He said it was possible to say that one board member could make a decision, but he didn't think the hearings officer could take part in making the decision.

SENATOR BECK, said that might solve the problem. He maintained you wouldn't need the hearings officer to actually make a decision, all he would do was make a recommendation.

Craig Thomas, said he was uncomfortable having just one board member make the decision. He would rather see it left the way it was.

SENATOR SHEA, asked if the Governor could appoint the hearings officers so they would have that ability.

Craig Thomas, replied that would create a professional board.

SENATOR SHEA, said it was sad, because they had done this to this these people and now couldn't find an avenue for them to do their job right.

REPRESENTATIVE NOENNIG, said he didn't understand the resistance to restructuring the board to allow one board member to make the decision.

Craig Thomas, maintained that **REP. NOENNIG** was suggesting one board member have the authority to make the decision.

SENATOR MCNUTT, asked if you couldn't also add "based on a recommendation from a hearings officer".

REPRESENTATIVE NOENNIG, replied absolutely.

REPRESENTATIVE FACEY, said if there were two members at a hearing and one was a board member, basically the hearings officer was voting by making a recommendations.

Craig Thomas, said he thought they were getting confused about how exactly this worked. He said if a board member was present he acted as a hearings officer, the staff member was simply there to give advice and answer questions. He wondered how to address the problem if another board member didn't agree with the decision.

REPRESENTATIVE NOENNIG, thought they would change the procedure so the hearing examiner was the hearing examiner and the board member was the board member. The hearing examiner had to make a recommendation in every situation.

Craig Thomas, said he thought it would be better to leave it the way it was.

SENATOR BECK, said there was other stuff in the bill they needed.

SENATOR SHEA, said none of them know what they go through. She maintained she was sorry that they couldn't help them with their work load.

Craig Thomas, thanked the committee. He said they desperately need the extra hearings officers. He said they would work something out next session.

Motion/Vote: **SEN. BECK** moved that **THE HOUSE AMENDMENTS BE CONCURRED IN**. The motion carried 4-1, with **Senator Shea** voting no.

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ADJOURNMENT

Adjournment: 5:41 A.M.

SEN. WALTER MCNUTT, Chairman

PHOEBE OLSON, Secretary

EXHIBIT (ccs53sb0020aad)